

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

Petition to Amend Part 68 of )  
the Commission's Rules to )  
Include Terminal Equipment )  
Connected to Basic Rate )  
Access Service Provided via )  
Integrated Services Digital )  
Network Access Technology )

and )

In the Matter of )

Petition to Amend Part 68 of )  
the Commission's Rules to )  
Include Terminal Equipment )  
Connected to Public Switched )  
Digital Service )

and )

Correction of Part 68 )  
Typographical Errors, )  
Clarifications and a Proposal )  
for Part 68 Registration )  
Revocation Procedures )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 93-268

RM 7815

RM 6147

**COMMENTS OF THE  
NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION**

The North American Telecommunications Association submits the following comments on the Commission's Notice of Proposed Rulemaking in this proceeding. The Notice proposes new Part 68 registration requirements for CPE connecting to ISDN service (both "basic rate access" (BRA) and "primary rate access" (PRA)) and for CPE connecting to "public switched digital service" (PSDS).

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The Notice also proposes new procedures that the Commission can use to revoke a company's Part 68 registration.

#### STATEMENT OF INTEREST

NATA is a trade association representing manufacturers, suppliers, distributors, and retailers of customer premises equipment ("CPE") and related business telecommunications services. Founded in 1970, NATA exists to promote competitive markets and healthy sales and support channels for users of business and public communications products and services. NATA has actively participated in FCC proceedings affecting CPE markets. NATA supports regulatory policies that promote high quality equipment and service offerings and that ensure fair competition in the telecommunications equipment and services distribution marketplace.

I. THE COMMISSION SHOULD ADOPT NONDISCRIMINATORY  
REGISTRATION REQUIREMENTS FOR ISDN AND PSDS CPE

Regarding the proposals for Part 68 registration of ISDN and PSDS equipment, NATA generally supports Part 68 registration of such equipment. The adoption of clear cut standards for equipment registration and for the network interface should encourage wider deployment and use of ISDN equipment and services. We particularly support the simultaneous promulgation of registration rules for both BRA and PRA terminal equipment. Adoption of both types of interfaces simultaneously is essential in order to ensure that ISDN is effectively available in a timely manner to all classes of customers, and in order to prevent carrier discrimination between

network-based and premised based ISDN solutions through the selective availability of interfaces.

II. REGISTRATION REVOCATION PROCEDURES SHOULD BE CAREFULLY CRAFTED TO AVOID UNINTENDED ADVERSE EFFECTS ON THE CPE MARKET

The Commission also proposes to adopt, for the first time, revocation procedures for Part 68 equipment registrations. The proposed rules provide that registrations may be revoked for any registrant:

- (1) Who has obtained the equipment registration by misrepresentation, or
- (2) Whose registered equipment is shown to cause harm to the network, or
- (3) Who willfully and repeatedly fails to comply the terms and conditions of its part 68 registration, or
- (4) Who willfully or repeatedly fails to comply with any of the provisions of the Communications Act of 1934, as amended, or of any rule, regulation or order issued by the Commission.

proposed 47 CFR § 68.211(a). The rules further provide that any equipment for which a registration is revoked cannot be re-registered for at least six months following revocation.

The Notice does not specifically state what abuses of Part 68 registration have prompted the Commission's concern with the need for revocation procedures. NATA does not dispute that there should be some means of revoking Part 68 registrations for cause. However, commenting parties cannot evaluate the problem and recommend solutions unless the Notice provides more details about the nature of the Part 68 abuses that the Commission hopes to

address by instituting registration revocation proceedings in appropriate cases.

From informal discussions with staff, we understand that some manufacturers may be shipping products which they have manufactured without regard to the rules or to the manufacturers' own representations in their Part 68 registration applications. If such abuses are occurring, they clearly warrant revocation of the manufacturers' registrations. The integrity of the registration program must be preserved, and manufacturers who flout the program by misrepresenting their equipment or intentionally manufacturing equipment that materially deviates from their registration statements should not be tolerated. However, to the extent that the rules reach beyond such clear cases of abuse, further factual development of the record is required. This is especially true since the rules have been in place for 15 years without formal revocation procedures.

In this regard, NATA has two substantive concerns. First, some clarification is needed of the provision for revocation of registrations of a manufacturer "whose equipment causes harm to the network." Taken literally, this provision appears to mean that if equipment, when it was manufactured, complied with the existing Part 68 rules, that equipment would nevertheless be subject to revocation if the Commission later determined that the existing rules did not adequately protect the network from harm. This seems an inappropriately draconian result. Manufacturers should be required to comply with existing Part 68 rules and with their own

registration statements. However, a manufacturer cannot be expected to anticipate all possible harm that might become the subject of a future Part 68 rule.

From time to time, newly discovered types of harm may require amendment of the Part 68 rules to strengthen the standards or add new requirements. Arguably, if such newly discovered harm is serious enough, the Commission might need to take steps to protect the network from embedded equipment, even though such equipment complies with all Part 68 rules in existence when it was manufactured. However, any such steps should not include the invocation of punitive revocation procedures.<sup>1/</sup>

NATA's second concern has to do with the implications of the proposed rules for after-market service and supply organizations and the potential for litigation between service and supply companies and manufacturers who are concerned about the integrity of their Part 68 registrations. Over the years, there has developed a flourishing "after market" in business telecommunications equipment and equipment servicing. This "after market" arguably benefits the public interest by allowing business users to reclaim the "residual value" of older equipment. After-market companies can continue servicing equipment after it is no longer supported by the manufacturer. In addition, when the customer is

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<sup>1/</sup>The procedures are clearly designed to have a punitive function. They are analogous to the Commission's "show cause" procedures for punishing "willful and repeated violation" of the Communications Act or Commission rules. Further, they result in a sanction that is, and is intended to be, injurious to the manufacturer -- revocation of a registration with no reregistration possible for six months.

ready to replace equipment, some of the value can be reclaimed by selling the existing equipment to an after-market supplier. Trade-ins provide an inexpensive supply of used equipment for customers with limited telecommunications resources.

In some cases, manufacturers have established programs to more or less effectively "supervise" the after-market in their equipment to ensure that refurbishers and used equipment dealers do not modify equipment in a way that conflicts with the manufacturer's registrations. Not all manufacturers, however, have such programs. Thus, there is at present a fairly large "gray" market in which equipment is serviced by independent companies and used equipment components are bought, disassembled, refurbished and/or reassembled, and sold to new customers without close attention being paid to the resulting systems' conformity or lack thereof with its "original" registration.

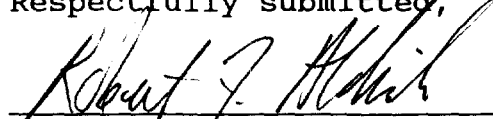
In these circumstances, there could be adverse consequences if the Commission's new Part 68 registration revocation procedures are applied -- or if manufacturers fear they will be applied -- in a way that holds the manufacturer responsible for anything that may happen to equipment in the after-market. Such fears could lead manufacturers to try to shut down the after-market by cutting off all supplies of parts to refurbishers, used equipment dealers, and their customers. This, in turn, could prompt antitrust litigation as well as Part 68-based disputes between after-market organizations and manufacturers. See, e.g., Eastern Kodak Co. v. Image Technical Services, Inc., 112 S. Ct. 2072 (1992). Such litigation

and the resulting confusion, uncertainty, and disruption of the marketplace would not be particularly beneficial to the industry or to the public interest.

Therefore, NATA urges the Commission to make clear that a manufacturer's Part 68 registration is subject to revocation only as a result of actual misrepresentations or other violations by the manufacturer. A manufacturer's Part 68 registration should not be revoked as a result of equipment modifications made by other parties without the manufacturer's consent.

Finally, NATA notes that the rules provide that equipment cannot be "reregistered" for six months after registration, but do not explicitly define what constitutes "reregistration." If equipment is registered under a different brand name, how similar does it have to be to the equipment whose registration was revoked, in order for the Commission to reject it as "reregistered" equipment? It may be necessary for the Commission to provide a more precise definition of when an equipment registration will be considered a "reregistration."

Respectfully submitted,



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